IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.246 OF 1993.

The State of Maharashtra,
[Through the Collector, Nasik]
and anr. : Appellants.

versus

Hamida Anwar Shaikh & ors. : Respondents.

Mr.S.N.Gawade, AGP, for the appellants.
Mr.K.S.Patil h/f. Mr.P.N.Joshi for Respondent Nos. 1 & 5.
Mr.S.S.Vidyarthi with Mr.S.M.Vidyarthi for Respondent No.6.
Mrs.Ghosalkar-Shah for Respondent No.8.

CORAM : D.G.DESHPANDE,J.

DATED : 18th January 2005.

ORAL ORDER.

1. Heard the learned AGP for the State/appellants and advocates for the respective

respondents. This appeal is filed by the State challenging the grant of compensation to the claimants-respondents by the Motor Accident Claims Tribunal, Nasik by its judgment dated 25.4.1991. A claim petition came to be filed by the representatives of Anwar Shaikh who died in the accident. The accident took place on 3rd December 1984 in the afternoon. The deceased was driving his Priya scooter. When he came out of by-lane meeting N.D.Patel road near Divisional S.T. Workshop, at that time a truck, belonging to the appellants and being driven by Respondent No.8, bearing No.MHF 1470 came in excessive speed and caused an accident in which Anwar Shaikh was killed.

2. The appeal is filed mainly on the grounds that firstly from the evidence it cannot be inferred that the the driver of the appellant's truck was rash and negligent and, secondly and alternatively, it was contended that this is a case of contributory negligence. Therefore, either appeal should be allowed fully or compensation should be reduced proportionately.

3. In order to prove that it was negligence

on the part of the driver of the truck, the claimants examined a witness who was the pillion rider on the Priya scooter. He is P.W.3 Usman. He has stated that on 3/12/1984 at about 4 p.m. he and his friend Anwar Shaikh were proceeding from S.T. colony to N.D.Patel road on scooter. Anwar was driving the scooter at a speed of 10 to 15 km. per hour. On N.D.Patel road Anwar turned his scooter towards south and after he drove his scooter to the distance of 5 to 7 metres, a truck came in excessive speed from opposite side. It was on wrong side of the road and when the truck came near the scooter, he shouted "Anward be aware" but the right side of the frontal portion of the buffer of the truck gave dash to scooter . The witness has raised his right hand, therefore, he sustained injury to his right hand. He saw that Anwar fell on the road and died on the spot.

. Counsel for the appellants pointed out that a perusal of the panchanama, which is brought on record and proved, will show that the version of the witness stands falsified. Because as per the panchanama the scooter has hit the truck near the rear wheel of left side and there were break marks of the scooter on the road which

clearly reveal that the scooter was in a high speed.

3. On the other hand the counsel for the respondent Nos. 1 and 5 contended that the panchanama does not reveal the correct picture because in the situation of main road and by-lane road such an accident is impossible. In order to appreciate these submissions of both the parties it is necessary to note hear that N.D. Patel Road is North-South; S.T.Colony road meets it from Eastern side; the deceased was coming on his scooter from the S.T. colony road and truck was going towards North from South; the deceased wanted to take turn to his left i.e. towards South and, therefore, according to the counsel for the **respondents** if at all there was to be an accident because of the rash and negligent driving of the deceased then he would have hit the right side of the truck i.e. the side of the driver and, under no circumstances the scooter of the deceased could have hit the left side because in that case he would have been required to over take the truck by crossing the entire road and going to the left i.e. towards West.

4. Counsel for the appellants, further, contended that firstly no inference like this and as stated by the counsel for the respondents can be drawn and, there is nothing on record to suggest that when the panchanama was prepared the police had any intention or motive to prepare false panchanama exonerating the truck driver and implicating the deceased.

5. If the panchanama is not there and if it is discarded then the submissions of the counsel for the respondents gets some strength and force. However, I do not find any reason to disbelieve or to discard the panchanama. It was prepared by the police officer who was examined in the Court and no motive was attributed to him to prepare false panchanama. Secondly, the panchanama was prepared immediately after the accident. Whether there being any time for anyone to manipulate the document and, no obvious reason was there to do so. If the panchanama shows marks of dash of the scooter on the left side of the truck in rear portion, then evidence of the witness (PW 3) - pillion rider does not get any support, but to the contrary it supports the evidence of the

witness who examined by the appellants and who was seating at the side of driver of the truck. The lower court fasten the liability of the accident upon the truck driver. But in the circumstances, it is contributory negligence upon the respondents. The compensation awarded in this case to the claimants, who are dependents i.e. wife and children of the deceased, is Rs.1,60,000/- . Once the court comes to the conclusion that this accident occurred on account of contributory negligence by both the deceased and the driver of truck, the compensation has to be reduced. Half of Rs.1,60,000/- comes to Rs.80,000/-. However, in my opinion, reduction of Rs.60,000/- would be sufficient. Hence the order :-

:ORDER:

The appeal is partly allowed.

The compensation awarded to the claimants of Rs.1,60,000/- is reduced to Rs.1,00,000/-.

No order as to costs.

[D.G.DESHPANDE]

18/01/2005 JUDGE.